

NOTICE PUBLICATION/REGULATIONS SUBMISSION

EMERGENCY

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-09)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER	EMERGENCY NUMBER 2009-1203-01EE
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For use by Office of Administrative Law (OAL) only

2009 DEC -3 PM 2:15

OFFICE OF
ADMINISTRATIVE LAW

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY

Department of Alcohol and Drug Programs

AGENCY FILE NUMBER (if any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Licensure and Certification Fees	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2009-0618-02E
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT Sections 10700 and 10701
	AMEND Sections 10518 and 10529
	REPEAL Sections 10532 and 10533
TITLE(S) 9	

3. TYPE OF FILING

<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input checked="" type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify) _____	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5-day emergency comment period 2/18 through 6/24/09; 45-day public comment period 7/30 through 9/15/09

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

<input type="checkbox"/> Effective 30th day after filing with Secretary of State	<input type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> \$100 Changes Without Regulatory Effect	<input checked="" type="checkbox"/> Effective other (Specify) 12/27/09
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6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input checked="" type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input checked="" type="checkbox"/> Other (Specify) County alcohol and drug program administrators (HSC 11835)		

7. CONTACT PERSON

Mary Conway

TELEPHONE NUMBER

(916)327-4742

FAX NUMBER (Optional)

E-MAIL ADDRESS (Optional)

mconway@adp.ca.gov

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE

DATE

TYPED NAME AND TITLE OF SIGNATORY

Kelley Farrell, Staff Counsel

For use by Office of Administrative Law (OAL) only

DEPARTMENT OF ALCOHOL AND DRUG PROGRAMS

**Amendment of Section 10518 and 10529,
Repeal of Sections 10532 and 10533, and
Adoption of Sections 10700, 10701,
Title 9, California Code of Regulations**

LICENSURE AND CERTIFICATION FEES

Full Text of Emergency Regulations to be Readopted

AMEND SECTION 10518 AS FOLLOWS:

§ 10518. Where to Submit Completed Applications.

Applicants shall submit completed applications for licensure to the Licensing and Certification Division, Department of Alcohol and Drug Programs, 1700 K Street, Sacramento, CA 95811-4037.

As used in this regulation, "completed application" means an application for licensure which includes all of the information and documentation required in Sections 10516 and 10517- and all fees pursuant to Chapter 5.5, commencing with Section 10700.

Note: Authority cited: Sections 11755, 11833.04, 11834.50, and 11835, Health and Safety Code. Reference: Sections 11833.02, 11834.03, and 11834.09, Health and Safety Code.

AMEND SECTION 10529 AS FOLLOWS:

§ 10529. Extension of Period of Licensure.

- (a) At least 120 days prior to the expiration date noted on the license, the Department shall send a notice to the licensee which shall:
 - (1) Inform the licensee of the date when the current period of licensure will expire, as specified on the license;
 - (2) Inform the licensee that the period of licensure will be extended if the licensee:
 - (A) Updates the licensing information contained in the licensee's application for licensure;
 - (B) Pays all licensing fees in accordance with Section 40533; 10701;
 - (C) Pays any civil penalties assessed in accordance with Section 10547 and adjudicated pursuant to Section 10550; and
 - (D) Maintains a valid fire clearance.
 - (3) Notify the licensee that failure to pay all licensing fees due or to return the information requested by the date of expiration specified on the notice will result in automatic expiration of the license and that continued operation of the facility beyond the date of expiration is prohibited by Section 11834.30 of the Health and Safety Code and Section 10505 of this chapter.
- (b) ~~If the licensee complies with the requirements of Subsection (a)(2) of this regulation, the Department shall automatically extend the period of licensure, unless the Department has petitioned the court to enjoin operation of the facility, pursuant to Section 10548(f).~~
- (c) If the licensee fails to comply with the requirements of Subsection (a)(2) of this regulation, the license shall automatically expire as of the date specified on the license.
- (d) The Department shall not extend the period of licensure until all licensing fees and/or civil penalties, assessed pursuant to Section 10547 and adjudicated pursuant to Section 10550, have been paid in full.
- (e) Failure to pay licensing fees and/or civil penalties, assessed pursuant to Section 10547 and adjudicated pursuant to Section 10550, within thirty (30) days after the date the period of licensure expires shall be deemed a voluntary relinquishment of the license.
- (f) In the event that the licensee voluntarily relinquishes the license, in order to reapply for licensure the licensee shall:

- (1) Submit a new application for licensure, pursuant to Article 3 (commencing with Section 10514) of this chapter:
- (2) Pay a licensing fee; and
- ~~(2)~~(3) Pay all outstanding licensing fees and all unpaid civil penalties, assessed pursuant to Section 10547 and adjudicated pursuant to Section 10550.

Note: Authority cited: Sections 11755, 11833.04, 11834.50, and 11835, Health and Safety Code. Reference: Sections 11833.02, 11834.01, and 11834.16, Health and Safety Code.

REPEAL HEADING OF ARTICLE 5

Article 5. Licensing Fees

REPEAL SECTION 10532 AS FOLLOWS:

~~§ 10532. Computation of Licensing Fees.~~

- ~~(a) The Department shall assess a fee for licensing each alcoholism or drug abuse recovery or treatment facility not operating under the auspices of a nonprofit organization or a governmental entity.~~
- ~~(b) The Department shall compute licensure fees every other year.~~
- ~~(c) The licensure fee shall be the average actual cost of licensing a facility, computed as follows:
 - ~~(1) The Department shall compute the average actual cost by dividing the projected departmental expenses (including staff salaries and benefits, operating expenses, and indirect costs related to licensing) for the current fiscal year by the total number of residential alcoholism or drug abuse recovery or treatment facilities licensed as of June 1st of the previous fiscal year.~~
 - ~~(2) The Department shall provide the data base used for computing licensure fees upon request and shall also include it as part of the Department's application for licensure.~~~~

~~Note: Authority cited: Sections 11755, 11834.50 and 11835, Health and Safety Code.~~

~~Reference: Section 11834.15, Health and Safety Code.~~

REPEAL SECTION 10533 AS FOLLOWS:

~~§ 10533. Payment of Licensing Fees.~~

- ~~(a) Except for residential alcoholism or drug abuse recovery or treatment facilities which are operated under the auspices of a nonprofit organization or a governmental entity, all applicants for licensure and all licensees are required to pay a licensing fee, computed by the Department in accordance with Section 10532.~~
- ~~(b) The application for licensure shall specify the amount of the licensing fee to be paid upon application.~~
- ~~(1) Applicants for licensure shall attach to the application for licensure a certified check or money order in the amount of the licensing fee.~~
- ~~(2) The Department may terminate its review of an application for licensure if the applicant has failed to attach the required licensure fee.~~
- ~~(3) The licensure fee shall not be refunded.~~
- ~~(c) At least 90 days prior to the expiration date specified on the license, the Department shall notify the licensee of the amount of licensing fee to be paid and the date by which the fee shall be paid.~~
- ~~(1) The licensee shall submit licensing fees prior to the expiration date noted on the license.~~
- ~~(2) The license shall expire on the date specified on the license unless all licensing fees have been paid in full.~~

~~Note: Authority cited: Sections 11755, 11834.50 and 11835, Health and Safety Code.
Reference: Sections 11834.03, 11834.09 and 11834.16, Health and Safety Code.~~

ADOPT CHAPTER 5.5 AS FOLLOWS:

**CHAPTER 5.5. LICENSURE AND CERTIFICATION FEES FOR OUTPATIENT PROGRAMS
AND RESIDENTIAL ALCOHOLISM OR DRUG ABUSE RECOVERY OR
TREATMENT FACILITIES.**

ADOPT SECTION 10700 AS FOLLOWS:

§ 10700. Purpose of Chapter.

This chapter shall implement the process for assessing licensure and/or certification fees for all outpatient programs or residential alcoholism or drug abuse recovery or treatment facilities, regardless of the form of organization or ownership, that are or seek to be certified pursuant to Chapter 7 (commencing with Section 11830.1) and/or licensed pursuant to Chapter 7.5 (commencing with Section 11834.01), Part 2, Division 10.5 of the Health and Safety Code.

Note: Authority cited: Sections 11755, 11833.04, 11834.50 and 11835, Health and Safety Code. Reference: Section 11833.02, Health and Safety Code.

ADOPT SECTION 10701 AS FOLLOWS:

§ 10701. Fees.

- (a) Outpatient programs and residential alcoholism or drug abuse recovery or treatment facilities, regardless of the form of organization or ownership, shall pay fees for applications and for continued licensure and/or certification as provided in this regulation, until such time as any new fees or fee changes are enacted in accordance with Section 11833.02(d) of the Health and Safety Code. As used in this regulation, "initial/extension fees" means fees for initial two-year period of licensure and fees for biennial renewal.

(1) Residential Licensure Fees

(A)	Initial Residential Licensure Application Fee	\$ 2,773.00
(B)	Biennial Residential Licensure Initial/Extension Fee	\$ 147.00 (per bed)
(C)	Adolescent Waiver Application Fee	\$ 1,370.00
(D)	Dependent Children Application Fee	\$ 958.00
(E)	Increase in Bed Capacity Application Fee	\$ 940.00
(F)	Facility Relocation Application Fee	\$ 916.00

(2) Outpatient Certification Fees

(A)	Initial Outpatient Certification Application Fee	\$ 2,664.00
(B)	Biennial Outpatient Certification Initial/Extension Fee	\$ 3,452.00
(C)	Facility Relocation Application Fee	\$ 916.00

(3) Combined Residential Licensure and Certification Fees

(A)	Initial Combined Residential Licensure and Certification Application Fee	\$ 3,698.00
(B)	Biennial Combined Residential Licensure and Certification Initial/Extension Fee	\$ 147.00 (per bed)
(C)	Adolescent Waiver Application Fee	\$ 1,370.00
(D)	Dependent Children Application Fee	\$ 958.00
(E)	Increase in Bed Capacity Application Fee	\$ 940.00
(F)	Facility Relocation Application Fee	\$ 916.00

- (4) In addition, residential facilities that are approved for an increase in bed capacity will pay the per bed licensure and/or certification fee for each treatment bed added to the facility. Expansion bed fees will be prorated to the next expiration date of the license/certification.

- (b) The Department shall not commence review of any application which does not include all fees which are due at the time of application. The Department shall not renew any

license or certification unless all fees are paid prior to the expiration date. All fees are nonrefundable, shall be paid by certified check or money order, made payable to the Department of Alcohol and Drug Programs, and submitted with the completed application to the Department of Alcohol and Drug Programs at 1700 K Street, Sacramento, CA 95811-4037.

- (c) Upon approval of an application for initial licensure and/or certification, the Department shall notify the applicant in writing of the amount of fee due for initial biennial licensure, certification, or combined licensure and certification. The applicant shall pay initial biennial licensure, certification, or combined licensure and certification fees by certified check or money order within 30 days of the date of the notice. Upon receipt of the fee, the Department shall issue the license or certification.

Note: Authority cited: Sections 11755, 11833.04, 11834.50 and 11835, Health and Safety Code. Reference: Section 11833.02, Health and Safety Code.

DEPARTMENT OF ALCOHOL AND DRUG PROGRAMS

**Amend Section 10518 and 10529,
Repeal Sections 10532 and 10533, and
Adopt Sections 10700 and 10701,
Title 9, California Code of Regulations**

LICENSURE AND CERTIFICATION FEES

Finding of Emergency for Readoption

The Department of Alcohol and Drug Programs (ADP) finds that an emergency exists and that the subject emergency readoption is necessary for the immediate preservation of the public peace, health, safety, or general welfare. The information contained in the finding of emergency for the original emergency adoption is hereby incorporated by reference, updated as described below:

On June 29, 2009 emergency regulations took effect amending Sections 10518 and 10529, repealing Sections 10532 and 10533, and adopting Sections 10700 and 10701, Title 9, California Code of Regulations (CCR), to allow ADP to collect licensure and certification fees for residential alcoholism or drug abuse recovery or treatment facilities (residential facilities) and certification fees for outpatient alcohol and other drug programs (outpatient programs), regardless of the form of organization or ownership, as required by Health and Safety Code (HSC) Section 11833.02, added by Chapter 177 (Senate Bill 84), Statutes of 2007. The emergency regulations did not adopt new policy; they merely codified existing policy implemented in 2007 through ADP Bulletin 07-11, pursuant to HSC 11833.04.

ADP adopted the regulations on an emergency basis as required by HSC Sections 11831.5(g) and 11833.04(b). HSC Section 11831.5(g) stated in part: "...adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, and general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, including subdivision (e) of Section 11346.1 of the Government Code, any emergency regulations adopted pursuant to this section shall be filed with, but not be repealed by, the Office of Administrative Law and shall remain in effect until revised by the department. Nothing in this subdivision shall be interpreted to prohibit the department from adopting subsequent amendments on a nonemergency basis or as emergency regulations in accordance with the standards set forth in Section 11346.1 of the Government Code." HSC Section 11833.04(b) stated: "Notwithstanding any other provision of law, the adoption of regulations implementing this chapter shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, safety, or general welfare."

ADP immediately proceeded to make the emergency changes permanent, making them available for public comment from July 30 through September 15, 2009, holding a public

hearing on September 15, 2009, reviewing all public comments received, and considering every alternative recommended by the public.

However ADP cannot file the certificate of compliance by December 28, 2009, when the emergency regulations expire. HSC Section 11835 requires ADP to present all regulations for a vote by the county alcohol and drug program administrators, and the county administrators prefer to vote on final regulations immediately prior to final submission to the Office of Administrative Law. Due to state and county fiscal constraints, ADP presents regulations to the county alcohol and drug program administrators at quarterly meetings of the County Alcohol and Drug Program Administrators Association of California (CADPAAC). ADP could not present the regulations for vote by the county administrators at the previous quarterly CADPAAC meeting in September 2009, because the 45-day public comment period ended just prior to the meeting, leaving ADP without sufficient time to review the public comments prior to the CADPAAC meeting. The next quarterly CADPAAC meeting is not scheduled until January 26-29, 2010. Thus ADP is requesting emergency readoption of the subject regulations on December 27, 2009.

If these regulations are not readopted on an emergency basis, ADP and the State of California will not be able to charge licensure and certification fees in compliance with HSC Section 11833.01. Inability to charge licensure and certification fees as required by HSC Section 11833.01 would deprive ADP of the revenue it needs to provide sufficient staff resources to continue licensing and certifying residential facilities, certifying outpatient programs, and monitoring and ensuring the quality of AOD treatment services provided by residential facilities and outpatient programs. Without the ability to continue those activities, ADP could not ensure the quality of services provided, endangering not only the health, safety, and welfare of clients of those facilities and programs, but also the health, safety, peace, and welfare of neighborhoods and communities in which those residential facilities and outpatient programs are located.

HSC Section 11834.30 prohibits operation of a residential facility without a license. Without the continued revenue ADP needs to provide sufficient staff resources to extend biennial licensure, currently licensed residential facilities would be forced to close when their current two-year period of licensure expires unless they chose to operate in violation of law. Closure of existing residential facilities, combined with ADP's inability to license new residential facilities, would severely impact the availability of essential AOD treatment services in California. Without sufficient availability of AOD treatment services, the rate of alcoholism and addiction could increase, threatening individual and public health by increasing the prevalence of hepatitis B and C infection, HIV/AIDS, sexually transmitted diseases, and tuberculosis. An increase in alcoholism and addiction would impact the welfare system by decreasing individuals ability to support themselves and their families or to be responsible, productive members of society. An increase in alcoholism and addiction would impact public safety by increasing the incidence of driving under the influence. An increase in alcoholism and addiction would impact the criminal justice system by causing an increase in criminal activity.

Additionally, failure to readopt these regulations on an emergency basis could negatively impact the economy of California. If ADP were unable to extend existing licenses,

facilities would close, leaving owners and staff of those facilities unemployed and without income, increasing state costs for unemployment and welfare subsidies. At the same time, ADP could not license or certifying new facilities or programs, depriving the state of needed revenue from licensure and certification.